1877-78.
(L.R).

File No. 47 of 1877-78
Serial No. 1-4.

Sub: Sale of Chattram set in satisfaction of a private debt (Case of Ramadesa Subbama).

(30)

Rev. 86 of 93.

G. R. S. IX-5]

Previous references. 1877-78

191 Land. (Revenue)

File No. 47 of 1877-78

Serial Nos. 1—1

Later references.

1—4 Sls.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-4

Madras ~~Part~~ B for January 1918.

SUBJECT.

Sale of Chattram etc in Satisfaction of a private debt (Case of Ramadasa Subbanna)

Ordered

W D 88—GPB—50,000—24-7-16

G.R.S. III-

[To be used … nanent record.]

The Notification of 28th July 1876 referred to in ~~the~~ does not ~~lay~~ lay down any rule regarding the enjoyment of the fruits of Topes. The planting of a Tope has for its ~~object~~ avowed object public utility and convenience and the practice has been that after the trees came into bearing the fruit was enjoyed by the public at large without objection on the part of the planter. But in this instance the owner appears to have been enjoying the fruit exclusively for many years prohibitively to the exclusion of the public, and there was no occasion to question this right.

To Hosdey Powers
Esq
24-1-80

Please see Circular No 121 of the Revenue Board dated Nov 86 of the Standing Orders which contains the following clause.

"When the trees of fruit trees,
"shall have become productive,
"the Tope shall be entered in
"the accounts as a public
"tope free of all tax and the
"produce left to the planter,
"the appropriated for the support
"of the Choultry, repair of the
"road or other Municipal purpose
"contemplated."

N.B.—Shoul… the … this

Proceedings of the Chief Commissioner of Mysore, Department of Revenue, Agriculture and Commerce, 8th January 1878.

REVENUE.

2

READ—

Proceedings of the Chief Commissioner No. 4357—112, dated 30th July 1877, communicating copy of the form of Sanad in use in the Bombay Presidency, regarding grant of land to private individuals for the construction of Dharmasalas and other works of public utility.

To *A. B.*

WHEREAS Government have been pleased to grant to you, *A. B.*, the below mentioned piece of land situated in the village of in the

taluk of the District, for the

purpose of*

rent free (namely) :—

All that piece of land bounded on the north by

,

on the south by , on the east by

, and on the west by

and measuring from north to south

,

and from east to west , comprising

square in superficial area, and numbered

No. in the

It is hereby declared that the said land shall be continued for ever free of all claim on the part of Government for rent or land revenue to whoever shall from time to time be the lawful holder or manager of the said on the condition that neither the said land nor any building erected thereupon shall, at any time, without the express consent of Government, be diverted either temporarily or permanently to any other than the aforesaid purpose, and no change or modification shall be made of the object for which the said is founded, and that in the event of any such unauthorized diversion, change, or modification being made, it shall be lawful for Government, on causing six months' previous notice in writing to be given to the said holder or manager to take either of the two following courses (namely) either—

(1.) To require that the said land be vacated and delivered up to Government free of all claims or incumbrances of any person whatsoever, or

(2.) To impose thenceforward such annual rent for the occupation of the said land until the same is vacated and delivered over to Government as to Government shall seem fit, which said rent shall be recoverable under the law at the time in force for recovering an arrear of land revenue.

This sanad is executed on behalf of the Secretary of State for India in Council by order of His Excellency the Governor in Council of Bombay this day of

187 .

(Signed) †

Official designation.

From the Commissioner, Nagar Division, To the Secretary to the Chief Commissioner of Mysore,
General Department, No. 796—331, dated Bangalore, 11th October 1777.

In reply to No. 4357—112, dated 30th July last, has the honor to state that the Deputy Commissioners unanimously advocate the adoption of the form of grant for lands assigned for the construction of Dharmasalas &c., which form in the opinion of the undersigned appears suitable.

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* *Note.*—The purpose and the extent of the public interest in it, should be clearly set forth, as, for instance," building a dharmasala for the free and unrestricted use of all classes of the community."

† *Note.*—The officer who signs should be the officer duly empowerd by the Government of India to sign such documents on behalf of the Secretary of State.

1878.

GOVERNMENT OF MYSORE

REVENUE.

To

THE COMMRS. OF DIVISIONS.
„ DY. COMMRS. OF DISTRICTS.
„ SURVEY AND INAM COMMISSIONER.

Dated January 8th.

Despatched

Received

No. 8637.
37.

Prescribes for general adoption the form of Sanad in use in the Bombay Presidency for granting land to private individuals for the construction of Dharmasalas and other works of public utility.

Proceedings of the Chief Commissioner of Mysore, Department of Revenue, Agriculture and Commerce, 1st March 1878.

From the Commissioner, Nundydroog Division, To the Secretary to the Chief Commissioner of Mysore, General Department, Genl. No. 274, dated Bangalore, 13th October 1876.

I have the honor to forward for the orders of the Chief Commissioner copy of a letter No. 1451—471 of the 9th instant, received from the Deputy Commissioner of Kolar requesting instructions as to whether Chattrams constructed by private individuals are liable for their debts.

2. I beg to add that such Chattrams have heretofore been considered inalienable.

From the Deputy Commissioner, Kolar District, To the Commissioner, Nundydroog Division, No. 1451—471, dated Kolar, 9th October 1876.

A complaint having been preferred to me that a Chattram built by a deceased private individual on a piece of ground granted to him free for the purpose by the Government has been sold in execution of a civil decree passed against an heir of his, I have the honor to request the favor of being informed whether such buildings intended for the benefit of the public can be sold for the private debt of either the person who built it or of his heir. The Government in order to encourage the people to plant topes and construct wells and Musafarkhanas grant inam lands, but if they are allowed to be sold for private debts I am afraid the existing Chattrams, &c., will soon disappear.

From the Secretary to the Chief Commissioner of Mysore, General Department, To the Judicial Commissioner of Mysore, No. 7821—G. 1280, dated Bangalore, 4th November 1876.

With reference to the question submitted in the accompanying copy of letter No. 274 of 13th ultimo from the Commissioner, Nundydroog Division, I am desired to request the favor of your opinion as to the desirability of prescribing a rule on the subject which will prevent the alienation of Chattrams and other buildings from the purposes for which they were erected, and in consideration of which purpose the aid of the State has been obtained either in the form of the grant of site or of lands on reduced assessment.

The Chief Commissioner proposes to declare such buildings to be the property of the State and therefore not subject to sale by the decrees of the Civil Courts without express sanction. It would be desirable no doubt that a list of such buildings should be obtained and published in the Local Gazette.

From the Judicial Commissioner of Mysore, To the Secretary to the Chief Commissioner of Mysore, General Department, No. 2042—215, dated Bangalore, 4th December 1876.

I have the honor to acknowledge the receipt of your letter No. 7821—1280, dated 4th ultimo and to state that I concur with the Chief Commissioner in thinking that the object aimed at should be attained by prescribing a rule to prevent alienations of Chattrams. In the Madras Presidency under Regulation VII of 1817 the general superintendence of Choultries and Chattrams endowed by Government vests in the Board of Revenue, but it does not appear that in this Province any rule exists to that effect. The rule under which the grants of site or lands were given to the maintenance of Chattrams does not authorize their being declared the property of the State, but only provides for the resumption of the grant in case of their not being kept in good repair and otherwise fulfilling the purpose for which they are established.

2. The rules appear to be defective in this respect, and I would suggest that with regard to future grants, a clear condition should be made vesting the property in the State for the benefit of the public and expressly extinguishing the right of alienation on the part of the founder or his heirs.

3. In regard to existing Chattrams or other such buildings, the continuance of the grant might be made contingent on the owner consenting to abide by the conditions above proposed.

No. 10539—Rev. 61, dated Bangalore, 1st March 1878.

Order thereon.—In the first of the letters above quoted, the Commissioner of Nundydroog Division raises the question whether a Chattram or other such building intended for the benefit of the public and built upon land granted free for the purpose can be sold for the private debt of either the founder or manager of such building or his heirs.

2. The Chief Commissioner observes that in Section 3 of the revised rules, dated 28th July 1846, relating to the grant of banjar or waste lands to Chattrams or Musafarkhanas, &c., it is laid down, as one of the conditions of the grant, that the Chattrams and Musafarkhanas shall be open, as to general benefits, to all classes and castes ; and in Section 8, it is expressly stated that any neglect in keeping them in good repair and ensuring their usefulness to travellers shall subject the jodi lands granted to resumption.

3. If in the case under reference the purchaser at the court sale executes a muchalika or agreement, offering to abide by the conditions on which the grant of land for the erection of the Chattram in question was made, the sale may be recognized by Government, but if he refuses to do so the land can no longer be upheld as a rent free or jodi inam, but will be liable to assessment at full rates.

4. In regard to future grants of land for the erection and maintenance of Chattrams, Musafarkhanas &c., the form of sannad prescribed for adoption in this office Proceedings No. 8637—37, dated 8th January last, provides against such Chattrams or Musafarkhanas being diverted to any purpose other than that for which they were erected; and to make the conditions more stringent and explicit, and so as to vest the property itself in the State in the case of an unauthorized alienation or diversion without the sanction of Government, the Chief Commissioner directs that the following additions be made to the form of sannad.

In line 17, before the word "diverted" insert "alienated or."

In line 20, between the words "unauthorized" and "diversion" insert "alienation or."

In line 23, after the word "land," add "together with the buildings thereon."

In line 25, after "land" add "and buildings."

In line 26, for "is" substitute "are."

5. A list of the existing Chattrams, Musafarkhanas, &c., in each District, for which grants of land have been made under the rules prescribed in this office Circular No. 15, dated 28th July 1846, should be prepared under the orders of the Deputy Commissioner, and published in the *Mysore Gazette* for general information, and the Civil Courts should be warned against permitting any sale or alienation of the same except on the condition prescribed in para 3 above.

R. A. COLE,
Offg. Secretary.

To Judicial Commissioner, for communication to all the Civil Courts, with copy of Chief Commr.'s Procdgs. No. 8637-37, dated 8th Jany. 1878.
" Commissioners of Divisions.
" Commissioners of Districts.
" and Inam Commissioner.

5

R7. 86893.

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

Filed.

Vernacular Correspondence received from Kadwi Bl— the Dy. Comr. Kaira vide his No. 1373 of 17.1.1900 to the then Chief Comr. Dy Topes in the then Baroda Salute to unnecessary in this Office.

A draft to the Dy: Comr. is put up herewith.

28/10/12 Bl

Dove Br 10/12

Br. V

No. 11/12

Issued No 9946/Jue 5-8 de 13.12.

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

W.D. 84—GPB—60,000—20-7-16

The Dy: Comr. Kaira

Forwards Vernacular

Correspondence & requests on
acknowledgment.

AD Smith Dr: Cord. Kadel.
rec. 8/2 Dis. 137 & 7/4-1-18
17-18

Acknowledges the receipt of
the Correspondence

Papers may be recorded
separately in another collection.

8/1/17

3. 6. 79 References
75

363

1879.

R. 476

From The Commissioner
Sind, Hyderabad

To

Secretary to Chief Commissioner,
Revenue General Department.

Dated 2nd June 1879.

Despatched 3rd —

Received 3rd

Regd 5th do

ENCLOSURES NO 1

General No. 470 } 1879-80
No. 470

Submits for orders
Copy of Correspondence
on the subject of restrict-
ing the action of the Civil
Courts in respect to the
sale of rights in Lohes,
wells &c constructed by
private individuals.

Sir

Please see Standing orders
Nos 105, 110 & 121 — Submitted —

To Revenue Secretary

(2)

No R 470

Hundydroog Division
Commissioner's Office.
Bangalore, 2nd June 1879.

E & D

The Secretary to the Chief
Commissioner of Mysore,
Revenue Department.

Sir,

I have the honor to submit for the consideration and orders of the Chief Commissioner, Copy of the Correspondence marginally noted, on the subject of restricting the action of the Civil Courts in respect to the sale of rights in Topes, Wells, &c^a Constructed by private individuals for the benefit of the public.

2.— In the instance adduced by the Deputy Commissioner Kolar, a Tope of 300 trees planted on Government land for the use of the public was sold in execution of the decree of the Civil Court passed against the individual who planted the trees and devoted them to public use,— his own rights being presumably limited to the use of decayed wood, and perhaps as in some cases, to the produce of the trees.—

3.— Obviously, nothing is sold at a Court Sale but the right, title and

From Dy. Comr. Kolar Dist.
No. 1916 dated 4th Novr. 1878.
536

To — do — do
No. 650-87 6th Feby. 1879.

From do do
No. 2465-87 12th Feby. 1879.
733

and interest of the Judgment debtor, and the sale purchaser would therefore, it may be assumed, have no power of causing any permanent injury to the topes in which these limited rights were acquired; but as a matter of fact the rights of founders and of Government in such cases are ordinarily so ill defined, that a sale purchaser, who might be a stranger to the village, might with impunity fell and remove all the trees without incurring any liability to an action at law for damages. The rights of Government in respect to these topes (whether Government or village topes) are exercised on behalf and in the interests of the general Community, and they are not secured by any formal deed or grant.

4. In the Madras Presidency all charitable institutions of this character including Chattrams, are, I believe, vested in Government and are under the Control of the Revenue Board, and I submit for consideration that in order to prevent

prevent the injury to public in-
terests, that may arise out of the
present conditions of affairs,
a register should be prepared
in every Island of every public
building and lope of which the
Government should assume the
possession. — Subject to such
privileges and rights as may be
at present enjoyed by individuals,
these institutions may then be
declared the property of Govern-
ment. —

I have the honor to be,
Sir,
Your most obedient servant.

Henry M. Clarke
Off Commissioner.

Dy. Commissioner's Office
Kolar District.
Camp at Varavani
4th November 1878

No. 1916/536

Rev. 4 & 1

The Commissioner
Bundy droog Division.

Sir,

I have the honor to submit the following case for your orders.—

2.— One Bhumanahully Papiah residing at Chickaballapur obtained a decree in original Case No. 319 of 1876 on the file of the Munciffs Court, Chintamany Sub Division, against one Subbroyappa of Rundalgurki Siddagattah Taloork, and in execution of this decree, a Tope or grove of 300 fruit trees planted by the latter (defendant) on a piece of Government land and a few fruit trees also planted by him amongst other Ryots in a village Tope were sold for Rupees 4.— The certificate granted by the Court to the Auction purchaser having been produced before the Sub Registrar Siddagattah for Registration, this officer has applied

to

to me for orders as to whether the sale of such Charity and Village Community Topes for which lands have been granted rent free, may be recognized. ... I would answer the question in the negative as by acknowledging the right of any person for such Topes planted for the benefit of the public on unassessed Government lands, the Country will soon be denuded of trees for planting of which we are taking so much trouble. - This case is one of the several instances which have been brought to my notice, of the Court sales being so pernicious to the Ryots, and it appears to me to be necessary that steps should be adopted to prevent this growing evil. .

3. - Under the above circumstances I respectfully beg to suggest that a Law may be passed exempting from attachment and sale, the Charity works such as Chattrams, Choultries, wells and Topes or trees planted by private individuals for the benefit of the public, the present law authorizing the sale

sale in execution of decrees, of right — title and interest of a person in such works being quite contrary, not only, to the established Custom of the country — but also to the intentions of the founder of the Charity. —

I have &c.

Signed/ B. Krishnaiyar
Deputy Commr.

Revenue Judy Proy Division
No. 650. Commissioner's Office
Bangalore 7th Feby 1879.

To,
The Dy Commissioner
Kolar District.

Sir,

I have the honor to acknowledge the receipt of your letter No. 1916/536 of the 4th November last in which you refer for instructions the question of altering the existing law or practice as to the liability to attachment and sale by a Civil Court of the right, title and interest of judgment debtors in respect of immoveable property

property of the nature of charit-
-table works, such as tube wells,
tanks, wells and topes held
by individuals for the benefit
of the public at large. -

2. — You instance a recent case
in which the interest of a judg-
-ment-debtor in a tope of 300
trees planted on Government
land, and in some other trees
planted in the village topes
having been sold in execution
of a Civil Court's decree and you
propose I understand that the
application of the auction pur-
-chaser to register the Court's
certificate at the office of the
Sub-Registrar should be rejected
on the ground that the interest
in question was not alienable.

3. — In regard to charitable
for which grants have been made
by Government on condition of
the buildings being held avail-
-able for the use of the public
the Chief Commissioner has in
Proceedings No. 10537 R. 61 dated 1st
March 1878 prescribed the course
to be followed in order to secure
the

the fulfilment of the conditions
of the grant.—

4.— In the case of Charitable
Topes the instructions laid down
by the Chief Commissioner cannot
be usually applied, I
presume, as in frequent cases
such Topes are not held on grants
of land, and in any case the new
owner would be free to destroy
the topes by felling and selling
the timber for his own profit,
regardless of the public injury.

5.— To prevent this it might
be expedient for Government to
assume the possession of all
such Topes, but before recom-
=mending this course for the consi-
=deration of the Chief Commis-
=sioner, I would ask you to as-
=certain, after reference to the
grants on which these Topes are
ordinarily held, whether such
a proceeding would be consistent
with the rights of present holders
and whether consent to this ar-
=rangement would be generally
obtainable.—

V.

6. In regard to the village Topes, it would be quite practicable, I conceive, for the Government to reserve an absolute right of property over them subject to an assignment of the produce to those who planted them or to the village community generally, I beg to be informed of your opinion on this point also ...

I have &c.

Signed J. F. G. Clarke

Offg Commissioner,

Dpty Commissioner's Office

Kolar District

Camp Hamsandra

12th February, 1879.

No. 2465-733

To,

The Commissioner

Mundy Droog Division.

Sir,

In reply to your letter No. 650 dated 8th Instant, I have the honor to submit that, in my opinion, the public Topes will be sufficiently protected if all those planted on Government lands for which no assessment is paid or for which no

no special grant was obtained, be declared to be public property and not in any way alienable, and the planter's right limited to the decayed trees which is all they are, as a rule, allowed to take on the conditions of planting new ones instead of those dried. If any enjoys the produce of such Topes either planted by himself or by his ancestors he is considered to have done so simply as a member of the public for whose benefit these charitable Topes are planted, and any enquiry as to the consent to the proposed arrangement of the person who planted them or of his representative might - I fear, be misconstrued that they are recognized by the Government as private property. I would not acknowledge the exclusive right of any one to enjoy the produce of such Topes as it would then be tantamount to an Inam grant. Produce of many of these Topes is sold by public

auction

duction annually, and the Govern-
ment derives under the head of
"Duty" a large amount of
Revenue which would be affected
if we allow the people of any
party to enjoy the produce free.

I have &c.

Signed/ B. Hirschhaeger
Dep Commissioner.

/Copy/
Henry Filby
Asst Commissioner.

and by them from the formation of the topes up to the present time, without any objection on the part of the Govt, & that the sale of the produce for the benefit of the Government, as directed by Major Grant, is contrary to the Conditions, under which the topes were originally planted.

3. Both the topes have jodi lands granted by the Govt under the Rules quoted for their preservation, and the Jodies have been confirmed by the Inam dept.

4. One view of the question as will be seen from the Papers submitted, is that the only Concession to which those who planted such topes, are entitled, is the enjoyment of the jodi lands assigned to them & that therefore they could legitimately lay no claim to the produce of the topes themselves, which should consequently go to the Government. But the other & more generally accepted view seems to be that the only obligation, to which the founders of the topes bound themselves under the Rules in question, is that which is referred to in Rule 7 and which requires simply the preservation of the stipulated number of trees "at all "times from decay & injury" and that as there is nothing in the Rules either expressly or impliedly, to show that the produce is to become the property of the Govt, it is hardly just now to advance any claim to it, so long as the enjoyment of the produce by the founders, does not subject the trees to "decay & injury".

5. The latter view is, I beg to submit, more

Reasonable & consistent with the object which the Rules in question appear to contemplate than the former. Even if doubts are now to be entertained as to its correctness, as I know of no instance in which such a claim as that now put forward, has ever been asserted or enforced during the long period since which the Rules have been in operation, I should think not only that this long existing practice confers upon the founders a equitable right to the indulgence they have enjoyed, but also that the advantages to be gained from an alteration of it, are too insignificant for a Government to insist upon a strict enforcement of the Rules alluded to. Even if there is room to hold that they fairly admit of the harsher & more restrictive interpretation that has now to be put upon them, if Major Grant's suggestion is to be followed.

I have the honor to be
Sir
Your Most obedt Servt

J. Macdonald
Offg Sy Commr
Cadr Dist

1880.

From The Sy Commissioner
Cadr Dist

To

Secretary to Chief Commissioner,
Revenue ~~General~~ Department.
Bangalore

Dated 17th January
Despatched 19 —— 8
Received

ENCLOSURES NO 1 Bundle Canv. papers.

General No. 373 } 1879—80
No.

Sir

I have the honor to submit herewith for the consideration and orders of the Chief Commissioner, the accompanying Canvasse correspondence, which has originated from the issue by the Superintendent of Revenue Survey, to the Collector of Canara, of an order directing the sale of the produce of topes planted by private individuals under the Rules dated 28th July 1876.

2. The Collector in attempting to carry out the above order has met with objections from two persons by name Ramadassa & Soobbanna, whose ancestors had planted two such topes, & who state that the produce of the topes has been enjoyed by the ancestors

G.R.S. 29A]

1917
~~190~~ 513

From

The Chief-

Secy. to the Govt. of His Highness
The Maharaja of Mysore,
~~**Genl. and Rev. Dept.**~~

To

The Dy. Comr.
Kadur

Dated

Despatched 13.12.17

Received

General No. C 7946
No.

ENCLOSURE No. one bill

Has the honour to return herewith the Vernacular Correspondence received in the Chief Comr's office with his No. 1373 & 17-1-1800 re certain lopes in the then B. annual Inlet & to request an acknowledgment.

By order

for Chief Secy

10/12/17

GPB—10,000—9-4206.

W.D. C244—GPB—6,00,000—19-5-16—S.

1918 SC 4

From
The Deputy Commissioner
Kadur district

To
The Chief Secretary to the
Government of Mysore
Bangalore

Dated 2nd
Despatched 4th } January 1918.

Received
JAN 1918

General No. D/2 Dis 137
No. 17-18

Enclosure No. nil

2158

Acknowledging the receipt of
Vernacular Correspondence —
re- Certain topes in the then
Baniavar Taluk.

Office of the Deputy Commissioner,

Kadur District.

DIARY NO. 5029.

Dated Chikmagalur, 2nd January 1918.

From

C.Devaraj Urs, Esq.,

Offg. Deputy Commissioner,

Kadur District.

To

C.S.Balasundaram Iyer, Esq., B.A.,

Chief Secretary to the Government of Mysore,

Bangalore.

Sir,

I have the honour to acknowledge the receipt of the vernacular correspondence re: certain topes in the then Banavar Taluk received with your docket No.G.7946 dated 13th December 1917.

I have the honour to be,

Sir,

Your most obedient servant,

Offg. Deputy Commissioner,

Kadur District.

D.S.R.